

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of)	
the Commission's Rules to Facilitate the)	WT Docket No. 03-66
Provision of Fixed and Mobile Broadband)	RM-10586
Access, Educational and Other Advanced)	
Services in the 2150-2162 and 2500-2690)	
MHz Band)	
)	
Part 1 of the Commission's Rules - Further)	
Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable)	
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	MM Docket No. 97-217
Amendment of Parts 21 and 74 to Engage in)	
Fixed Two Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	
Commission's Rules With Regard to)	
Licensing in the Multipoint Distribution)	WT Docket No. 02-68
Service and in the Instructional Television)	RM-9718
Fixed Service for the Gulf of Mexico)	
)	
Promoting Efficient Use of Spectrum Through)	
Elimination of Barriers to the Development of)	WT Docket No. 00-230
Secondary Markets)	

To: The Commission

**RESPONSE OF ILLINOIS INSTITUTE OF TECHNOLOGY
TO PETITIONS FOR RECONSIDERATION**

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February 22, 2004

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Illinois Institute of Technology ("IIT"), by its attorneys and pursuant to Section 1.4(b)(1) of the Federal Communications Commission's ("Commission" or "FCC") Rules, hereby responds to the petitions for partial reconsideration and petitions for reconsideration of the

Report and Order in the captioned matter.¹ In the *Report and Order*, the Commission adopted a band plan that restructures the 2500-2690 MHz band into upper and lower-band segments for low-power operations and a mid-band segment for high-power operations. To facilitate the transition to this new band plan, the Commission established a comprehensive regulatory framework -- certain aspects of which raised significant issues among the petitioners. Among the most controversial decisions was the selection of the Major Economic Area (“MEA”) as the minimum geographic unit for transition.² Also problematic was the Commission’s treatment of EBS licensees in markets that had not been transitioned by one or more proponents as of January 10, 2008.³ Under the Commission’s plan, such licensees would be forced to discontinue operations and lose their licenses without any apparent opportunity to self-transition.⁴

IIT holds licenses for eight EBS channels in Chicago, Illinois and operates one of the nation’s longest running ITFS educational systems, providing educational programming to its remote students located throughout the Chicago area. IIT’s distance learning program and its licensed ITFS spectrum are an integral part of its educational mission; as a result, IIT seeks to ensure that the transition to the new band plan is completed in an orderly and efficient manner, without jeopardizing the continued operation of the EBS channels. From this perspective, IIT comments below on the petitions addressing the described key issues.

¹ Amendment of Parts 1, 21, 73 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Band, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004)(“*Report and Order*” and “*FNPRM*,” respectively). The petitions for partial reconsideration and petitions for reconsideration appeared in the federal register on February 7, 2005. See 70 Fed. Reg. 6440 (Feb. 7, 2005).

² *Report and Order* at paras. 74, 82.

³ *Report and Order* at para. 83; *FNPRM* at para. 269.

⁴ Id.

I. DISCUSSION

A. **Major Economic Areas Are Inappropriate Geographic Units For Transitioning To The New Band Plan.**

The Commission provided little justification for its decision to use MEAs as the minimum geographic unit for transitioning to the new band plan. Indeed, few, if any, commenters in the rulemaking proceeding below had even suggested transitioning by MEAs, and the widely supported industry Coalition Proposal had recommended a process by which a proponent would be required to transition itself, plus any other licensee whose operations might suffer a specified risk of interference as a result of the transition of other parties.⁵ While perhaps not a perfect solution, the Coalition Proposal had the advantage of limiting the geographic area for transition to one in which the parties actually were affected by the proposed change.

Notwithstanding the broadbased support for a more localized transition geographic unit (even while several commenters, including IIT, suggested improvements to the Coalition's proposed process), the Commission rejected the Coalition's Proposal as more likely to result in a "haphazard transition on a nationwide basis." Instead, the Commission concluded -- without support by commenters or other record evidence -- that transitioning by MEAs would (i) better ensure an orderly and expeditious transition process;⁶ and (ii) lead to the "development of a

⁵ See "A Proposal For Revising The MDS And ITFS Regulatory Regime," Wireless Communications Ass'n Int'l, Nat'l ITFS Ass'n and Catholic Television Network, RM-10586 (filed October 7, 2002 ("Coalition Proposal"), at App. B, p.2.

⁶ *Report and Order* at para. 82 (The use of MEAs would "enable a proponent or proponents to transition large areas of the country at once, which will ensure that the 2500-2690 MHz band is transitioned quickly and will enable the provision of new and innovative services for all Americans, including those in rural areas.").

rational market for spectrum in the 2500-2690 MHz band, thus allowing prospective licensees and lessees to develop a predictable business strategy.”⁷

Not surprisingly, the Commission’s unexpected decision to use the MEA as the required geographic unit for transitioning prompted near universal opposition by the petitioners. Thus, petitioners argued that “only delay and additional complexity” would result from the Commission’s proposal;⁸ that “MEAs are so large that even commercial licensees will likely be unable to afford acting as proponents to transition such extensive geographic areas;”⁹ and that “MEA-sized transition areas needlessly complicate the transition by drawing in thousands of licensees across hundreds of square miles that pose no threat of interference if they are transitioned at different times.”¹⁰ In sum, nearly every petitioner echoed this theme: that MEAs were too large and contained too many licensees to serve effectively as a minimum geographic unit for the transition.

IIT agrees with the petitioners on this issue and joins them in requesting that the Commission reconsider its decision to use MEAs for transitioning to the new band plan. The MEA in which IIT operates provides a case in point for this position. MEA 18 covers five states and includes approximately 94 counties (61 in Illinois, 25 in Indiana, 3 in Michigan, 3 in

⁷ Id.

⁸ See Petition for Partial Reconsideration of the Wireless Communications Association International, Inc. at p. 10 (“WCA Petition”); see also Petition for Reconsideration of Hispanic Information and Telecommunications Network at p. 2 (“HITN Petition”) (“[T]he FCC’s adoption of the a transition requirement based on MEAs . . . could have the perverse result of slowing rather than speeding up the transition of these frequencies as envisioned by the Commission.”).

⁹ See Petition for Reconsideration of eth Catholic Television Network and the National ITFS Association at P. 4 (“CTN/NIA Petition”); see also Petition for Reconsideration of C&W Enterprises at p. 2 (“C&W Petition”) (“Such large transition areas are impractical, cumbersome and prohibitive to any entity who desires to transition its market.”).

¹⁰ Petition for Partial Reconsideration of Nextel Communications at p. 3 (“Nextel Petition”).

Missouri, and 2 in Wisconsin). The total population in MEA 18 is approximately 15 million and the geographic area contained within MEA 18 exceeds 100,000 square miles. There are approximately 212 total EBS licenses in the 94 counties comprising MEA 18 -- 116 of which are in Illinois alone.¹¹ Of the EBS licensees in the MEA, there are about 20 unique university/college licensees, 100 unique high schools, and about 25 other institutions and organizations. In all, any entity seeking to transition MEA 18 would have to deal with 145 different entities on the EBS side alone -- these numbers do not even include BRS licensees. The administrative challenges involved in coordinating among such a large number of licensees over such a large area would be overwhelming. It is likely, given the large number of licensees, that substantive problems would develop as well, with some licensees almost certain to object to the transition plan. Even more daunting than the administrative and substantive difficulties, however, is the cost associated with transitioning all licensees within an MEA containing approximately 15 million persons and covering more than 100,000 square miles. Simply put, the cost would be prohibitive -- even for well-financed commercial operators -- and particularly when the transitioning entity has no vested interest in a large portion of the transition area. IIT, as an EBS licensee in Chicago, for example, has no interaction or reason to coordinate with licensees in Michigan or Missouri. Indeed, IIT would have no reason to coordinate with many licensees in Illinois, Indiana or Wisconsin so long as they were located a significant distance from Chicago.

By forcing a transitioning entity to transition all licensees within a given MEA, the Commission apparently believes that certain areas that otherwise would not be transitioned immediately would be included in the process at an earlier point in time. It is far more likely,

¹¹ These numbers do not even include the BRS licensees in the 94 counties covered by MEA 18 -- licensees which also would have to be transitioned under the Commission's plan.

however, that the greater administrative difficulties, substantive coordination and costs associated with this requirement actually would delay the transition for *all* areas -- even those areas which otherwise would be transitioned immediately. To make the proponent spread its financial and operational resources to transition large areas of no concern to the proponent is to make the whole process unduly burdensome, and inevitably, would slow the transition process. Moreover, contrary to the Commission's belief, the forced transition of an entire MEA, when a large portion of that area is not likely to be used by the proponent, actually would disrupt rather than enhance the business strategy of the proponent, because it is being forced to engage in activities that its business plan does not support. Many of the licensees being transitioned have no relation to the proponent and are not likely to interact with the proponent in its business endeavors. In short, the business strategy does not reflect the underlying business realities, and thus, is *less*, rather than more, predictable.

Basic Trading Areas ("BTAs") would bring the same advantage to the transition process as is associated with MEAs -- certainty as to the geographic area involved -- while avoiding the described significant disadvantages inherent with the large size of MEAs. Use of BTAs as the geographic unit for transition is much more workable since the size of these units more closely tracks the actual market area in which any given proponent is likely to be interested. This geographic unit is widely supported by the petitioners,¹² and IIT joins them in urging the Commission to adopt BTAs as the geographic unit for transitioning.

B. Licensees Must Have The Opportunity To Self-Transition.

The Commission's transition plan, as set out in the *Report and Order*, contemplates that MEAs would be transitioned by one or more proponents, who in turn, would be obligated to

¹² See, e.g., WCA Petition at p. 9; Nextel Petition at p. 7; CTN/NIA Petition at 4; HITN Petition at p. 4.

transition all affected licensees within the designated area.¹³ To the extent that a transition was not initiated as contemplated within three years of the effective date of the new rules, the Commission concluded that it would “use another method of transitioning an MEA.”¹⁴ Comments on alternative methods of accomplishing such transitions were solicited in the Commission’s *FNPRM*. That *FNPRM*, however, appeared more interested in flash-cut transition options, proposing that licensees not transitioned by the January 10, 2008 lose some or all of their authorized spectrum.¹⁵

Many petitioners objected to the Commission’s plan, arguing that licensees should have the opportunity to self-transition without serving as the proponent for transitioning an entire MEA. WCA, for example, criticized the Commission’s new rule as “unduly draconian,” arguing that a self-transition option is “fundamentally fair to all BRS and EBS licensees, as no licensee will lose an authorization merely because it does not elect to fund the transition of all licensees in its region.”¹⁶ CTN/NIA found it “shocking that the Commission would adopt such a plan given all that the Commission has said about the importance of preserving the educational mission of EBS licensees,”¹⁷ asserting that it was “both unfair and detrimental to the interests of education for EBS licensees to face the prospect of losing their licenses for reasons entirely beyond their control”¹⁸ And HITN argued that “having created a transition method of a scale beyond the

¹³ See *Report and Order* at paras. 79-80.

¹⁴ *Id.* at para. 83.

¹⁵ See *FNPRM* at para. 269.

¹⁶ WCA Petition at p.p. 37-38; see also Sprint Petition at pp. 4-5.

¹⁷ CTN/NIA Petition at p. 4.

¹⁸ *Id.* at 5.

reasonably economic means of individual EBS licensees, it would be manifestly unfair for the Commission to then punish well-meaning and otherwise compliant licensees for any inability or failures of commercial entities to transition the band within the allotted timeframe.”¹⁹

IIT agrees with these petitioners that BRS and EBS licensees should be afforded an opportunity to self-transition to the new band plan. As it noted in its Reply Comments on the *FNPRM*, IIT has already invested considerable resources converting to digital transmission. IIT is perfectly capable of self-transitioning if necessary, and such action would further the goals of the Commission in this proceeding. The proposed default clearing of spectrum in MEAs without allowing self-transitions unfairly penalizes those who are able to transition on their own and, in particular, will result in unfair bias against the EBS licensee.

Moreover, there is simply no justification for placing EBS and BRS licensees at the mercy of one or more proponents who may be affected by larger issues of cost, market definition or technical limitations. The fact that a proponent did not materialize, or failed in its transition efforts, should not cause the Commission to lose hope that the market can be transitioned.²⁰ Keeping in mind that transition is at best a messy process, IIT believes that any licensee in a market should be able to initiate a self-transition process at any time after January 10, 2008. Because a change of frequencies to those held by other EBS and BRS licensees is required, the

¹⁹ HITN Petition at pp. 5-6. In this regard, HITN also noted its concern that the Commission’s rules “might yield an unanticipated incentive for an operator to delay transitions in certain regions within the three year timeframe if it believed it would be cheaper to transition the band after the FCC had cleared the Band of untransitioned licensees.” HITN Petition at p. 5. Similarly, IIT is concerned that the argument of several commercial operators that they be afforded one “free withdrawal” of an Initiation Plan without penalty (see, e.g., WCA Petition, at p. 20) could be used to pressure licensees to conform to the proponent’s plans for the transitioning area. If proponents are to be given a second chance to transition the same area, IIT recommends that certain controls or standards be adopted to ensure that proponents do not use this additional chance to create unfair leverage against licensees.

²⁰ As noted *supra*, the selection of the BTA as the geographic unit for transition would go a long way to ensuring a more widespread transition to the new band plan.

self-transitioning licensee should be able to cause other EBS and BRS licensees with overlapping GSAs to participate in this process. Because self-transitioning licensees do not realize the same economic benefits as a commercial proponent might realize upon transition, the self-transition should be limited to those minimal changes required to assure that intra-market interference is not caused. Thus, there should be no requirement of the self-transitioning licensees to purchase or install upgraded converters. Instead, IIT believes that the licensee who first files a self-transition notice both with the Commission and with those licensees in the market with overlapping GSAs (“Affected Licensees”) shall be deemed to have triggered a process whereby all Affected Licensees must cease operations not in conformance with the post-transition frequency assignments and characteristics within 180 days of this notice date, absent a consent to an extension approved by all Affected Licensees (and lasting no more than 180 days).²¹ At this time, operations conducted in accordance with the post-transition frequency plan should enjoy primary status as against adjacent market co-channel stations not in conformance with that plan. In brief, this would be a compulsory transition that is deemed concluded when all operations not in conformance with the post-transition frequency plan cease.²² The foregoing proposal is entirely consistent with the goal to rapidly move to the new band plan, and may be necessary to allow licensees to commence operations on the new band plan while a transition progresses in adjacent markets.

²¹ IIT objects to an overly short time frame for filing this notice. The Commission should adopt rules to best enable self-transitions to occur. Accordingly, licensees should be permitted to file a self-transition notice up to 180 days following the January 8, 2008 period, and be given at least 180 days following submission of the notice to effect the self-transition.

²² IIT also believes that Affected Licensees in a market should be able to self-transition by the same process at any time before a proponent files an initiation plan and before January 10, 2008, but with the exception that all Affected Licensees must consent to the transition. In this case, IIT sees the wisdom of delaying the primary status of these licensees until the later of January 10, 2008 and 180 days after the self-transitioning notice.

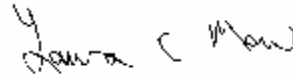
II.
CONCLUSION

For the reasons above, IIT supports the Petitions as set forth herein, and urges the Commission to modify the *Report and Order* in accordance with its Response herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donna B. Fleming, a secretary with the law firm of Gardner Carton & Douglas LLP, hereby certify that on this 22nd day of February, 2005 a copy of the foregoing **“Response of Illinois Institute of Technology to Petition for Reconsideration”** was mailed by U.S. First-Class Mail, postage prepaid to the following:

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